

CongressDaily**AM**

MONDAY

TUESDAY

WEDNESDAY

THURSDAY

FRIDAY

MAY 3, 2000

Managed Care Talks Continue Slow Pace

HEALTH

WITH BOTH THE House and Senate back from recess, talks on legislation to regulate managed care plans are re-summing where they left off — with slow going. To some extent, the talks are moving backwards, according to Democrats who say the declaration of a tentative deal before the break on an “external appeals” process was a bit premature.

“As we tried to nail down what we agreed to, we find there are a number of holes remaining,” said one Democratic staffer of efforts to draft into legislative form the process by which patients could contest adverse decisions by their health plans.

Even **Senate Majority Whip Nickles**, who is chairing the conference, acknowledged that staff is “still drafting” the appeals language.

Among the issues still outstanding, according to Democrats, are what the standard should be to determine which decisions are eligible for outside medical reviews, who selects the reviewer, what to do about potential conflicts with state external review laws, and how much discretion the reviewer should have.

In other words, would the reviewer be able only to affirm or deny the health plan’s decision, or be given latitude to order something in between?

Staffers also are working on final language for two more minor issues — how free women should be to visit obstetrician/gynecologists without a “referral” from their primary physicians, and how much and in what form patients should be given information about their health plans.

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Still hanging over the talks — now well past Republican-set deadlines for completion by the end of March — are the two biggest issues: how many people the bill should cover and whether patients should be given new rights to sue health plans for damages if they are injured as a result of care denials.

The twin issues of “scope” and liability are thought universally to be the most difficult to resolve, since the House and Senate bills differ dramatically.

The House-passed bill would apply to all 168 million Americans with private insurance, while most of the Senate’s protections would cover only the estimated 55 million people in plans that states may not regulate. The

House bill would broadly expand the right to sue, while the Senate bill would not.

Speaking to reporters Tuesday after the party lunches, Nickles said he was “not going to set arbitrary deadlines” for completion of the negotiations, but he does “want to accelerate the pace” on key issues. In particular, he said he wants to “escalate the discussions” on scope and liability in an effort to move the talks along.

Complicating matters further, a group of House members who voted for the House-passed bill asked conferees to make some key changes.

In a letter written before the break to **Commerce Chairman Bliley, Rep. Pete Sessions**, R-Texas, and 13 other members said their votes for the bill were “a statement of our firm conviction

that this important issue needed to move forward through the full legislative process” but “we remain receptive to constructive alternatives likely to emerge from the conference committee.”

Specifically, the group urged that employers who offer health insurance to their workers be more fully shielded from potential lawsuits than provided by the House language, which would allow suits against employers who exercise “discretionary authority” over health benefits.

They also want language to require that patients exhaust all appeals mechanisms before lawsuits can be filed, and a provision barring lawsuits in cases in which employers follow the decision of an outside reviewer.

— **By JULIE ROVNER, with CHARLIE MITCHELL**
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